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## Confusing Experiences and Legal Paradoxes on Human Rights

– or do we need a new approach regarding the last and most defenceless  
minority in the human rights legislation?

### *Introduction to the modern dispute on the value of human life*

At the beginning of the 20<sup>th</sup> century, the mass deportations of citizens into concentration camps for the purpose of effectively isolating certain, politically untrustworthy citizens from society under scarce and terrible conditions during the war between the British and the Boer, launched a series of new approaches towards violating human beings' dignity and right to life. As the living and fading memories vanishing into history of thousands of lethal Soviet work camps which were extensively and devilishly organised as well as politically driven from the 1920s, the unprecedented Nazi Holocaust and their death and extermination camps from the 1930s, the state-organised mass killings of the Khmer Rouge in Cambodia in the 1970s, and many African civil wars until the end of 20<sup>th</sup> century, some hope that all these horrible events are already behind us. The existence of human rights may luckily mean today that we have successfully entered a new age of civilisation and have a higher level of respect for human dignity and civil liberties. We may believe that discrimination and exclusion in general finally belongs to this shameful past and the unavoidable heritage of the 20th century, and we now can finally turn our faces towards the bright light of humanity. In the past decades, a great deal has been achieved in the field of human rights, legislations and institutions that have been set up in the interest of the implementation of human rights and newer generations of human rights from gender to disability have become evident and flourishing.

However, we cannot relax yet. Because this task, fighting for everyone's right to life and human dignity, which remains our solemn responsibility as a tribute to the fading memories of the deceased and exterminated, has not been achieved so far. In fact, I sincerely doubt that we will ever be able to achieve an ideal state of perfectly provided non-discrimination and equal opportunity in our society. Perhaps, hopefully, we can once and for all put a final end to the age of, at least, open and adverse discrimination in terms

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of human beings; however, a lot of open issues remained disturbingly unsettled. In addition, newer and newer phenomena are in the offing, in particular further clarification of human dignity and a higher level of respect for self-determination and identity.

However, until then, the case of human and living fetuses has not been settled at all. Why? Because, as I will try to demonstrate later, human fetuses are, in fact, the last under-classed people in our society, even though it is not widely realised in terms of legal perspective.

First, you may look at the growing understanding of the inalienable rights to life and human dignity of people with intellectual disability since the 1970s on the one hand. On the other hand, even serial killers' lives should be spared and saved from capital punishment based on the general understanding of human rights and international law. But most importantly, the last human rights-related United Nations Convention is that of the rights of persons with disabilities which states that *"States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others."*<sup>1</sup>

I therefore believe that this topic should be discussed in more detail and without a stigmatizing bias; and I also will try to reveal that there is an existing and real difference as well as, more importantly, an inherent conflict, if not a real and undeniable paradox, between the notions of persons and human beings which, in fact, definitely leads to the Convention expressly acknowledging the rights to life of fetuses, too. I doubt that the current and existing legal approach of international law on human rights has even realised this challenge, or that leading experts want to admit the problem itself, and my aim in this paper is to strengthen this new kind of application of the Convention and, by completing general human rights altogether.

It is important to reaffirm that I want this argument to be kept along legal perspectives and I will not rely on the arguments of different religious groups and churches and nor will I cite trends relevant to economic or demographic challenges in terms of the Western Civilisation (that of the EU in particular) such as shrinking working population in the decades to come.

In this paper I will therefore solely focus on the legal arguments pro and contra on the right to life and will further consider the relevant international laws, covenants and legal texts themselves for the sake of exceptionally and clearly understood human rights. My intention in this paper is to try and provide more pieces of argument, and to be honest: eventually siding with the pro-life standpoint in a way; however, after having considered all relevant points, I think, it should be made clear that the so-called pro-choice argument rather seem to be based on social-economic and welfare as well as wellbeing-driven approaches lacking the same gravity in terms of legal obligation for respecting human rights equally and that is why we may miss further discussions touching upon the pro-choice point of view when it comes to aspects other than those of legal arguments. Although maybe I can be criticized for this approach, I do not think that I have to come to any conclusion regarding the values of different arguments but I do maintain my right to have a dissenting opinion from the mainstream thinking and this should also be respected. I will also scrutinize the contents, subjects and the need of a unified and unambiguous standpoint without any exception in terms of *universal* human rights for all human beings.

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<sup>1</sup> Article 10.

### 1. Right to dignity and life in international laws – and what it lacks

Rights to dignity and life in international law both have a long history. I will ignore the arguments taken from religious texts and views, and I will only cite relevant references from the extant international laws. There is a common agreement that the first, and most important, international law on human rights which expressly stated first the rights to life and human dignity is the United Nations Universal Declaration of Human Rights (1948). Its Articles 1-7 are clear and refer to human beings, not persons in general.<sup>2</sup> However, there is a tendency to avoid using the phrase “human beings” in order to suppress and cover the hidden difference between persons and human beings as we may see later in this paper.

Regarding Articles 1 and 2 thereof, it is clear that the UN Declaration itself does not deal with freely born but different aged human beings with equal dignity and rights since it also prohibits discrimination based on age or *other status*.<sup>3</sup> As it says, the rights enshrined in the Declaration should be reserved and ensured “*without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*”. In addition to that, the Convention also declares in Article 5 that “*no one*”, regardless of legal capacity or other character, including age, cannot be treated in any cruel, inhuman or degrading way.<sup>4</sup>

In Article 6 we have a newer phrase for the subjects: *everyone*. This means that “*everyone has the right to recognition everywhere as a person before the law*”, without, supposedly, any form of discrimination as is already declared in Article 2. This, in fact, is in accordance with Article 16 of the International Covenant on Civil and Political Rights (1975). Moreover, another covenant, adopted in 1989 regarding rights of children as Convention on the Rights of the Child, also refers to human beings and not persons in Article 1: “*For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.*” This notion can be found in the Convention on the rights of persons with disabilities, too, in Article 10 in particular, which follows as “*that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others*”.

<sup>2</sup> Article 1. – All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2. – Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3. – Everyone has the right to life, liberty and security of person.

Article 4. – No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5. – No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6. – Everyone has the right to recognition everywhere as a person before the law.

Article 7. – All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

<sup>3</sup> See Article 2.

<sup>4</sup> “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” (Article 5).

So, we have at least 4 different words for beings as a subject under the Convention in terms of referring to people: "human beings", "no one", "everyone" and "person". Furthermore, if we compare the aforementioned conventions to one another, we cannot reach any other conclusion than that everyone of any age must inherently have a right to life. Everyone also has incapacitable dignity regardless of their social, biological or even any other status if they are indeed human beings, even if their "legal" personality is not acknowledged by legislation so far.

To put it simply, if this argument does not have reasonable sense, then the persons with intellectual disabilities should not have the same rights as others have, based on, for example, the lack of or little consciousness they have. The declaration on the people with mental disabilities also freed mentally disabled people from general, automatic and exclusive guardianship. In the same year of the adoption of the International Covenant on Civil and Political Rights, the UN declared in Article 3 of the Declaration on the Rights of Disabled Persons, proclaimed by the General Assembly resolution 3447 (XXX) of 9 December 1975, that *"Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible."*

This also means that there is no reason to regard some adult persons with intellectual disability with a different and other kind of consciousness as people without rights. Moreover, their lives are also to be defended in terms of human rights without any exception and regardless of any other basis. The Convention on persons with disabilities moved on because it not only collected and enshrined the political and civil rights people bear in general, but it also reinforced these rights with new kinds of guarantees as we will see later in this paper.

## 2. Notions of schools – war raging between pro-choice and pro-life

Even though the debate on abortion has long been one of the most heated topics during all US presidency elections since the 1970s, only a few words have been said on this topic from the point of view of human rights. It seems that this theme is still a taboo among human rights activists too. However, fewer issues could be more relevant to human rights than the one we are engaging in here because, in fact, the right to life is the most important and oldest human right. Before we move on, we have to record that - based on the current approach applied in the case of foetuses around the world - the value of the life of a foetus seems to be considerably less important than the right of a woman to her own body. Even though this is about the self-determination of the body with a view to gender-related rights, here we have to consider other aspects, which should be taken into account when it comes to the human rights of all human beings.

Let's see where we stand now in this argument. As I indicated earlier, I do not wish to present the religious standpoints or moral arguments regarding the view of pro-life supporters. However, the most important pro-choice point of view should be discussed here

first. The most famous pro-choice argument belongs to Judith Jarvis Thompson.<sup>5</sup> She sets a model in which two people are connected to each other in order to preserve the life of a famous violinist taken by a no-name person and forced to support the artist. Thus, the other person who must support without his consent, by connecting his organ to the body of the violinist, has no right to have control of his own body because he was forced to do so. In this model, the foetus, like the violinist, plays the role of a “parasite” connected to the mother, who actually happens to wish to live independently and inherently, like the no-name donor who had been forced to keep the ill violinist - the foetus in our other case - alive. Apart from the fact that a foetus cannot be an “alien” to its own mother, thus a foetus is *her* child, in contrast to the Thompson-model in which the donor does not have any link to the violinist, which entails that the donor really does have the right and control over his own body. Notwithstanding that we can understand the model of Thompson in terms of the right to the personal and exceptional control of body, it is not the case we have during pregnancy at all. Furthermore, even though the couple (parents) in question do not plan to have a family or a baby, basically pregnancy most of the time – except, for example, artificial insemination in which parents are also obliged to sign their free and mutual consent on pregnancy (here: in-vitro procedure) *beforehand* like a civil contract –, happens after sexual intercourse based on mutual agreement for having and enjoying sex together. Therefore, all parties - except in the case of rape which will be discussed later in this paper specifically - should bear in mind all possible consequences and outcomes, including the pregnancy itself when having sex. It is even true when not planning a family at all.

We may ask why. It cannot be a question that even children under the age of 14 cannot understand the consequences of stealing in a shop, so why then would that sex life be much different from stealing in terms of the legal nature of the consequences and the required higher level of responsibilities? This remains true even when we know that fathers tend to leave the mothers if they do not want to stay with the pregnant woman. Thus they can walk off without (any or effective) legal as well as factual responsibility for making any decision about the future of the pregnancy. When the mother wants to keep the baby, men can still walk away leaving mothers in despair, in many instances leading to a kind of existence of different, even double standards for sexes when it comes to responsibilities. These double and multiple standards will be discussed later in this paper.

### *3. The US Legislation – from the legalisation of abortion to the new notion of unborn victims*

In the US the frontline runs between the so called pro-choice and pro-life groups and activists. In the past some people supporting the pro-life position committed serious and terrible crimes, including murdering doctors who were serving the needs of pregnant women in abortion clinics based on the official permission by the famous decision, *Roe v. Wade*, of the US Supreme Court since 1973.<sup>6</sup> However, 30 years after the afore-mentioned Supreme Court’s decision, a new act was adopted prohibiting the killing of fetuses by some

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<sup>5</sup> THOMPSON, JUDITH JARVIS: A Defense of Abortion, *Philosophy & Public Affairs*, Vol. 1, no. 1, Fall 1971, <http://spot.colorado.edu/~heathwoo/Phil160,Fall02/thomson.htm>.

<sup>6</sup> *Roe v. Wade*, 410 U.S. 113 (1973) Full text: <https://supreme.justia.com/cases/federal/us/410/113/case.html>.

extremely cruel methods of abortion.<sup>7</sup> This victory took several years in Congress because the Democrat President Clinton vetoed similar bills in 1995 and 1997. The act itself focuses only on the methods not the age of foetuses. Practically it means that until 2003, for example, even a 6-month-old foetus could be terminated officially and legally.

Although this law was attacked by the pro-choice groups referring to the Supreme Court's afore mentioned decision in the name of the women's right to control their own body and the old fundamental civil freedom to the right to privacy, the Supreme Court upheld the law stating that the statute does not violate the Constitution.<sup>8</sup> Even though the new law does not prohibit abortion, a new approach is likely to be developed regarding the right to life of foetuses. Something also happened in the public mind, according to the polls of the Rasmussen Reports. It found that only four days after the court's decision, 40% of respondents "*knew the ruling allowed states to place some restrictions on specific abortion procedures.*" Of those who knew of the decision itself, 56% agreed with the decision and 32% were opposed.<sup>9</sup>

Furthermore, an ABC poll from 2003 found that 62% of respondents thought "partial-birth abortion" should be illegal.<sup>10</sup> One year later a newer act was adopted for the sake of protection of the so-called unborn victims. This law proclaims that even a foetus could be a person in terms of victims within the framework of federal crimes. This entails that it eventually recognizes a "*child in utero*" as a legal victim if they are injured or killed during the course of any of over 60 listed federal crimes of violence.<sup>11</sup>

In addition to this revolutionary law, there is another special piece of legislation with regard to foetuses that can even manage to survive their own abortion: Born-Alive Infants Protection Act since 2002.<sup>12</sup> This act entails that after being born (in terms of leaving and being separated from the mother's womb) there is no room to terminate the living baby's (foetus's) life, including the cases of indicted and failed abortions, too.

#### *4. Legislation in the EU – what do the EU institutions really think? Or do they consider anything at all on this topic?*

Interestingly enough, though, the EU has not got a firm or clear standpoint on the question of the right of foetuses to life. To understand the European version of human rights, which is in fact very different from the US one from the point of view of capital punishment, we have to realise the paradoxes of the application as well as the argument for the abolition of capital punishment in Europe.

With regard to capital punishment, the European Council has been adopting legal measures on human rights in the form of EU Guidelines since 1998. The Vice President of

<sup>7</sup> The Partial-Birth Abortion Ban Act of 2003 (Pub.L. 108–105, 117 Stat. 1201, enacted November 5, 2003, 18 U.S.C. § 1531,[1] PBA Ban).

<sup>8</sup> *Gonzales v. Carhart*, 550 U.S. 124 (2007).

<sup>9</sup> <http://legacy.rasmussenreports.com/2007/April%20Dailies/partialBirthAbortion.htm>.

<sup>10</sup> <http://www.pollingreport.com/abortion.htm>.

<sup>11</sup> The Unborn Victims of Violence Act of 2004 (Public Law 108-212), <http://www.gpo.gov/fdsys/pkg/PLAW-108publ212/html/PLAW-108publ212.htm>.

<sup>12</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-107publ207/html/PLAW-107publ207.htm>.

the European Commission Catherine Ashton indicated that the abolition of capital punishment worldwide is a “*personal priority*”.<sup>13</sup> This personal calling and commitment made by at the highest level regarding capital punishment was the first EU Guideline of the Council on human rights in 1998. In 2007 the Council, the European Parliament and the European Commission also expressed their commitment to abolishing capital punishment within the framework of issuing a joint declaration and adopting a European Day against the Death Penalty. When the Lisbon Treaty entered into force, member states had to, and still have to, maintain the abolition of the death penalty. Moreover, all member states acceded to as well as ratified Protocol 13 of Convention for the Protection of Human Rights and Fundamental Freedoms<sup>14</sup> on capital punishment, too.

The Charter of Fundamental Rights of the European Union, annexed to the Lisbon Treaty and therefore part of the so called *acquis communautaire*, is also very clear about the right to life (Article 2). It states that, apart from that no “*one*” shall be condemned to death penalty, no “*one*” either can be “*executed*”. Moreover, the next article (Article 3) moves on stating that “*everybody*” has the right to their own bodies (physical and mental integrity). The Charter itself also defends the rights of the involved “*persons*” considered to be human beings affected by eugenics and organ trafficking. Although, in fact, we have at least three kinds of status in terms of human beings; in Article 21 the EU clearly expresses that no discrimination is to be allowed on the basis of age, and therefore, of birth. It entails that this could include the notion of not only living human beings, but the unborn too.

Regarding the European Parliament, since 1988 some interesting steps have been taken in the field of rights to life of foetuses. Firstly the so-called Rothley report<sup>15</sup> dealt with this issue within the framework of genetic engineering with special regards to its legal and ethical questions. The report argued that anyone could foresee the consequences as well as risks of genetic engineering to society in general. However, this report did not deal with the issue of abortion or right to life in the case of foetuses, it simply expressed that the situation of human foetuses should be settled without any ambiguity (point 29). In point 31 of the report the EP thinks that even zygotes deserve legal defence (apart from foetuses) and guidelines, recommendations and other forms of soft legislation are not sufficient to handle this critical issue. Furthermore, the report also wants to prohibit any method for maintaining the lives of embryos for their body parts in order to perform special health-related cures and treatments for another, or, in fact, the person with the same DNA who happens to be “the owner” of the foetus or embryo.

At the same time, in the Casini report<sup>16</sup>, the EP also stated that the number and time span of frozen embryos shall be limited in the course of artificial conception. Seven years later, after the cloning-related Dolly-case came out, the EP established that the experts commissioned to come up with new recommendations should take into account human

<sup>13</sup> [http://eeas.europa.eu/top\\_stories/2013/101013\\_dp\\_en.htm](http://eeas.europa.eu/top_stories/2013/101013_dp_en.htm)

<sup>14</sup> The Convention for the Protection of Human Rights and Fundamental Freedoms also known as the European Convention on Human Rights (ECHR), of the Council of Europe adopted in 1950 to protect human rights and fundamental freedoms.

<sup>15</sup> Report on the ethical and legal problems of genetic engineering, A2-327/88, published: Official Journal C 96, 17/04/1989 pp. 165–171.

<sup>16</sup> Report on artificial insemination “in vivo” and “in vitro”, A2 372/88, published: Official Journal C 96, 17/04/1989 pp. 171–173.

dignity. During 2000 the EP adopted a new resolution on human cloning in which its point A expresses that the value of human beings and human dignity should be among the most respected aims of member states' constitutions. Based on the developments seen in the U.K., the battle continued between the arguing parties, partly because the British government adopted legislation that allowed human embryonic cloning for therapeutic reasons. After the fall of the pro-choice supporters in the EP, the following year a new report was adopted on this topic. The (rejected) Fiori report<sup>17</sup> called on the prohibition of embryonic cell research and in its point 6 the EP considers the need for the protection of human beings. Furthermore, as the report says, it should also be respected that the remaining, living embryos, after successful artificial conception (insemination), should in fact be adopted by foster parents instead of terminating them<sup>18</sup>

*5. A little digression: specific statistics on unintended pregnancies and rape– who can be responsible? And who definitely not?*

The question of rape victims is the most challenging and difficult one regarding unintentional pregnancies. There is a universal agreement, at least in the European Union, on the prohibition of terminating human life. In the USA this approach has a more diverging argument since capital punishment is allowed in many states in America, although, their number is decreasing. As we have seen earlier, the EU is fully committed to defending the life of a person after birth regardless of the statistics on crime in general, and there are clear signs that even the US Congress has been on a similar track to defend the lives of born children more effectively since 2002. However, in both cases there are no clear signs regarding the acknowledgement of the personhood of fetuses. It means that legislators in both countries are not prepared to solve and harmonise or at least balance out the paradoxes regarding the different positions of dissimilarly aged people, i.e. human beings, in legislation.

Since the EU committed itself to defending the value of life at all costs, including the abolition of capital punishment in all crimes, the only remaining question seems to be related to the issue of rape. Even though the state wants to prevent people affected by murders who have lost their family members from taking their own revenge with the help of the state, only the state has the right to decide the fate of criminals who have been sentenced based on evidence and fair trials. Even in the latter case the state has no right in the European Union to take the life of a given criminal whatever the social and family-related consequences were to the victims and their relatives.

Before we move on, there is a short digression when it comes to economic arguments and the so-called pro-choice standpoint in population control because certain American researchers argue that there is a close link between abortion and crime rates amongst poor and deprived African Americans, especially for the period after 1990. For

<sup>17</sup> Report on the ethical, legal, economic and social implications of human genetics, A5-0391/2001 (voted and rejected in plenary on 29.11.2001).

<sup>18</sup> Article 67 and 87.



instance John Donohue and Steven D. Levitt (Donohue-Levitt hypothesis<sup>19</sup>) argue in favour of the effect of the Roe v Wade decision in terms of indirectly mitigating the crime rate of young African-Americans after 1990. However, they were later criticized by Christopher Foote and Christopher Goetz who questioned the original data and the applied methodology.<sup>20</sup> The Donohue-Levitt argument can be construed as a kind of justification for eugenics, too, which can be considered the first stage to forced sterilization or the even worse things we have already seen in history.

At the same time, according to the New York City-based Center for Reproductive Rights, in most European countries, there is room for abortion based mainly on social-related justifications and a liberal point of view.<sup>21</sup> Let's see the global numbers here. Over 200 million pregnancies occur each year worldwide. Over a third are unintended and over 45 million cases a year end in induced abortion based on the decision made by mothers or other mothers forced to do so by their family. In the meantime the United Nations, based on the latest, complex Eighth United Nations Survey on Crime Trends and the Operations of Criminal Justice Systems (2001 - 2002)<sup>22</sup>, has statistically reported from government sources that more than 250,000 cases of male-female rape or attempted rape were recorded by police annually, covering 70 countries, which is only a fraction of births<sup>23</sup> or even the share of the causes of abortion. However, we also have to make clear that there is a huge gap between the reported and estimated rapes. At the same time, basically a significant decrease can be seen in terms of occurrence of rape in the developed world too.

Nevertheless statistics on rape are one of the most unreliable ones, the size of numbers indicates the diverging shares, even large gaps, between the voluntarily unintended pregnancies and the ones based on rape. Even doctor Nathanson, once the most prominent pro-choice activist, who died in 2011 as the most famous pro-life supporter, had acknowledged that before the Roe v Wade decision was made he himself vastly contributed to forging data on abortions in order to convince the public to support their position stating that the whole movement eventually led to "*the most atrocious holocaust in the history of the United States*".<sup>24</sup>

It is high time to consider that every person has to take responsibility for the lives they produce by their own (sexual) actions. Apart from the current disproportional burdens on female and male parents regarding the consequences of pregnancy, the question still

<sup>19</sup> DONOHUE AND LEVITT, The Impact of Legalised Abortion on Crime, Quarterly Journal of Economics, May 2001.

<sup>20</sup> CHRISTOPHER L. FOOTE – CHRISTOPHER F. GOETZ (2008-01-31): The Impact of Legalized Abortion on Crime: Comment, Federal Reserve Bank of Boston. Retrieved 2008-05-12.

<sup>21</sup> <http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/AbortionMap2014.PDF>

<sup>22</sup> <http://www.unodc.org/unodc/en/data-and-analysis/Eighth-United-Nations-Survey-on-Crime-Trends-and-the-Operations-of-Criminal-Justice-Systems.html>.

<sup>23</sup> More than 4 million births were recorded in the USA in 2002 alone ([http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52\\_10.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_10.pdf)) and 5 million in the EU at the same time [http://ec.europa.eu/eurostat/statistics-explained/index.php/Fertility\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Fertility_statistics).

<sup>24</sup> BERNARD NATHANSON: Aborting America. Doubleday & Company, Inc.: Garden City, 1979, p. 193: "*I confess that I knew the figures were totally false, and I suppose the others did too if they stopped to think of it.*" He also confessed that he contributed to more than 60,000 abortions during his professional life as director of the largest abortion clinic in the world in the US until, due to the spread of application of ultrasound and fetoscopy, in the 1970s he realised what happens in the womb during abortions. He personally aborted 5,000 fetuses, including his girlfriend's one, too. More on this topic in New York Times: [http://www.nytimes.com/2011/02/22/us/22nathanson.html?\\_r=0](http://www.nytimes.com/2011/02/22/us/22nathanson.html?_r=0).

remains: why and how do pregnant women have the right to terminate their own foetuses' lives in the 21<sup>st</sup> century in the developed world? It still remains a real question because in many, if not all developed countries, the state also has the right to take away children from families to institutions or foster homes and parents in the name of the child protection-related family laws if the mother turns out to be incapable of bringing up or unfit to care for her own child. Given that there would be room to discuss the rights of fathers to defend their own child's life in utero in particular, I basically focus on the lives of foetuses in general here.

All in all, today, as we see, eventually a mother cannot hit or injure her child without consequences but, at the same time, she can more or less freely abort her child if it is still in her womb. And what is the price of rape? All rapists should definitely compensate the rape victim much more for the rape. The mother could give away the newborn child to foster parents for adoption. Because, after all, the child itself cannot be made or considered responsible for the rape and may deserve a loving family with better prospects than killing it in its own mother's womb, too. It is about equal chances or an equal right to life, which cannot be denied, instead of losing any further chance in life.

*6. Do we have double standards? We definitely do.*

There is a reasonable argument in the scientific debate on the so-called double standards in regard to abortion and the burden of it. Usually most governments that ban abortion do not consider men to be responsible for the pregnancy and they let these men leave without any real and compelling consequences regarding their future. It is true that these fathers cannot walk away if the mother decides otherwise, though. This means that men are only responsible for their fetuses if these babies are born. If a mother chooses to terminate her foetus because she considers her foetus a serious and exceptional burden to live with, these mothers can find themselves in a very difficult situation without any help or support. (Here, before we move on, we have to bear in mind that, an abortion is never an easy decision or option at all.) This difficult situation is therefore really unbalanced and unjustified in terms of parental obligations. In this respect, some argue that, as the famous women's rights activist Margaret Sanger put it once: "*No woman can call herself free until she can choose consciously whether she will or will not be a mother.*"<sup>25</sup>

Acknowledging this previously-mentioned and exceptional as well as justifiable and inalienable right to all women, the basic question still remains here that this liberty can be held *after* sexual intercourse, not only before it. Referring to the analogy taken from civil law, we may wonder whether we could neglect different kinds of obligations before signing a contract or after it. We evidently have to see the differences which entails that even women should be obliged to follow some legal-like rules if they agreed to have sexual intercourse like signing a very intimate contract not only by their hand but also, to be more practical, with their whole body as a legal act. It does not mean that men can continue walking away from pregnant mothers. In fact all men who have sex with women making them pregnant should have further obligations in the age, let's say, of DNA.

<sup>25</sup> Margaret Sanger (1879–1966). *Woman and the New Race*. 1920., Chapter VIII. Birth Control—A Parents' Problem or Woman's?, Brentano's, New York, <http://www.bartleby.com/1013/8.html>

Today, due to the higher level of security provided for the public in terms of the war on terror, for example, in which every mobile phone conversation as well as every step taken are recorded by devices and cameras, it is high time to reconsider that the deeds people do may entail higher responsibilities which can easily be ensured by scientific methods.

Perhaps the war on death can also contribute to being more reasonable and taking more responsibilities for other people in general in order to ease the burden of double standards borne by pregnant women with their unintended fetuses. In this case we can reconsider the different statuses for people with different ages, including the unborn but living ones, too.

#### 7. CRPD and the Article on right to life – are there discrepancies there?

With regard to the fierce debate and failed vote in the US Senate on the UNCRPD Convention in December 2012, as the UK Telegraph reported, the Republican Senator John McCain had stated that “(W)ith respect to abortion, this is a disabilities treaty and has nothing to do with abortion”. As the debate went on, he also argued that: “Trying to turn this into an abortion debate is bad politics and just wrong.”<sup>26</sup> However, the picture is still not clear so far. Many legal experts representing the pro-life position described the Convention as a tool for the extension of abortion around the world in a clandestine way by referring to its articles about reproductive and health care (Article 25 in particular). Other experts argue that abortion is never mentioned in these UN treaties. However, some American politicians and opinion leaders seem to imply that officials and experts of the UN are trying to implement the agenda of abortion. “Dishonesty about this treaty’s ability to reinforce abortion in the United States is unacceptable,” said Josh Craddock, an international representative for Personhood USA. As Craddock added, “Senator McCain’s remarks are incorrect and incompatible with the goal of protecting persons with disabilities. Personhood must include all human beings, regardless of the state of their physical or mental development. That includes the unborn as well as the disabled.”<sup>27</sup>

Interestingly enough, however, in my opinion, the Convention has to protect the lives of disabled children by saying that “States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.” (Article 10). In addition to that, the long standing commitment of the United Nations, the International Covenant on Civil and Political Rights (CCPR) is clear about this and we shall repeat it (Article 6.1) here again: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”

<sup>26</sup> <http://www.telegraph.co.uk/news/worldnews/us-politics/9731771/Senate-vote-on-UN-disability-convention-shows-pitiful-state-of-US-politics.html>.

<sup>27</sup> <http://www.christiannewswire.com/news/8071671047.html>.

*8. Closing remarks – turning to a new, unexpected world with more intended babies*

Today, this unfolded and holistic approach I presented in this paper is not a reality. I would like to avoid being in the position to crack the whip over those who do not agree with me due to the complexity of this issue and the current level of our societies' developments and political as well as health and cultural environments. I am aware of the fact that human rights legislation itself was hardly created overnight in the past and nor will it be so in the future. Without citing statistics on demography, before long we will surely see the burning need to have more babies, especially in the developed world, we will need to defend the rights of unborn children in a world aging faster than it has ever seemed before in history.

However, I sincerely believe that technology and science (robotics, automatization, smart devices and solutions, etc.) may be able to deal with the upcoming societal challenges similar to those, at least in their extent, of slavery (desperate need of additional labour force) at the age of industrialisation, before the 20<sup>th</sup> century came. But it is another topic to be discussed in the future.

And it will definitely be earlier than sooner.

LÁSZLÓ LOVÁSZY

CONFUSING EXPERIENCES AND LEGAL PARADOXES ON  
HUMAN RIGHTS

– or do we need a new approach regarding the last and most defenceless  
minority in the human rights legislation?

(Summary)

I will try to demonstrate that human foetuses are, in fact, the last forgotten people in our society, even though it is not widely recognised in terms of legal perspective. I will also try to reveal that there is an existing and real difference as well as, more importantly, an inherent conflict, if not a real and undeniable paradox, between the notions of persons and human beings when it comes to international law. My aim in this paper is to challenge and strengthen this new kind of approach by contributing to completing general human rights altogether. In this paper I will try to focus solely on the legal arguments pro and contra on the right to life and will further consider the relevant international laws, covenants and legal texts themselves alongside some notable commentaries for the sake of exceptionally and clearly understood human rights.